

**SECTION 251 DOES NOT AFFECT
THE COMMISSION'S CURRENT ACCESS CHARGE RULES**

One of the primary goals of the Telecommunications Act of 1996 ("the Act") is to facilitate the development of competition in the provision of local telephone service. Both the plain language of the Act and the legislative history make clear that Section 251 does not affect the Commission's current access charge regime that governs the access that LECs provide to interexchange carriers ("IXCs") for the origination or termination of toll service.

**Section 251(c)(2) does not apply to the
origination or termination of telephone toll service.**

Section 251(c)(2)(a) provides that any telecommunications carrier may request interconnection "for the transmission and routing of telephone exchange service and exchange access."

"Exchange Access" is "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. Section 3(a)(40).

When an IXC is purchasing access from a LEC it is not "offering access" Therefore, Section 251(c)(2) does not apply.

**Section 251(c)(3) network elements used for the origination or
termination of telephone toll service are subject to Section 201.**

Section 251 (c)(3) imposes on an incumbent LEC "the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis. . ."

The pricing for Section 251(c)(3) network elements used to originate or terminate interstate telephone service would be pursuant to access tariffs. Section 251(d)(1) pricing applies only to those services subject to state jurisdiction.

**Congress would not have granted States jurisdiction over
interstate access arrangements.**

State commissions, not the FCC, are required to arbitrate and approve Section 251 interconnection agreements. Modifying the access charge regime pursuant to Section 251 would transfer regulation over access charges from the FCC to the States. Such an outcome conflicts with Section 251(i), which states that "nothing in this section [251] shall be construed to limit or otherwise affect the Commission's authority under section 201." Therefore, Section 251 only governs services over which state commissions have jurisdiction.

Section 251(g), retaining the current access charge regime, is inconsistent with the position that Section 251 requires a change.

Section 251(g) recognizes that the Commission has discretion to address access charges, it does not require such a review. Therefore, access charge review is not necessary to implement the requirements of Section 251 and should not be included in the 251 rulemaking proceeding.

The Act's legislative history supports this interpretation.

"The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission access charge rules."

Joint Explanatory Statement of the Committee of Conference at 117, discussing Sec. 251 of S.652.

Nothing in Section 251 is intended to change or modify the FCC's rules at 47 CFR 69 et seq. regarding the charges that an interexchange carrier pays to local exchange carriers for access to the local exchange carrier's network.

S.Rpt.104-23 on S.652 at 22.

There is no legislative history that indicates any intent to the contrary. Had Congress intended such a fundamental restructuring of interstate access charges by Section 251, it would have said so.

Revising access charges has implications for universal service.

It is widely acknowledged that access charge pricing has implications for universal service. Given this link, if Congress had intended to direct changes to the access charge regime prior to the thorough year long examination of universal service by a joint board, it would have said so. It did not. Therefore, access charges should not be included in the six month Section 251 rulemaking proceeding.

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**SECTION 251 DOES NOT AFFECT
THE COMMISSION'S CURRENT ACCESS CHARGE RULES**

One of the primary goals of the Telecommunications Act of 1996 ("the Act") is to facilitate the development of competition in the provision of local telephone service. To accomplish this goal, Section 251 requires, inter alia, that incumbent local exchange carriers ("LECs") provide local competitors with interconnection and unbundled access to their networks. Both the plain language of the Act and the legislative history make clear that Section 251 does not affect the Commission's current access charge regime that governs the access that LECs provide to interexchange carriers ("IXCs") for the origination or termination of telephone toll service.

A. Section 251(c)(2) does not apply to the origination or termination of telephone toll service.

Section 251 provides that any telecommunications carrier may request interconnection "for the transmission and routing of telephone exchange service and exchange access." Section 251(c)(2)(a)(emphasis added). The use of the term "exchange access" in this provision does not extend its requirements to the access that local carriers provide to them for the origination or termination of telephone toll service. To the contrary, the scope of this provision extends only to those local carriers that offer exchange services and exchange access services themselves. To the extent that a carrier, including an IXC, seeks to offer such exchange or exchange access services, Section 251(c)(2) would govern the necessary interconnection. It does not, however affect the current access charge regime.

This interpretation is supported by the definition of "exchange access." Section 3(a)(40) defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination

of telephone toll services. (emphasis added). Clearly, when an IXC is purchasing access from a LEC it is not "offering access," rather, it is offering toll and private line services. Therefore, Section 251(c)(2) does not apply.

B. Section 251(c)(3) network elements used for the origination or termination of telephone toll service are subject to Section 201.

Section 251 (c)(3) imposes on an incumbent LEC "the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis. . ."

While an IXC may purchase network elements under Section 251(c)(3) that would enable it to originate or terminate interstate telephone service, Section 251(c)(3) was not designed to circumvent the Commission's current access charge regime. Rather, the pricing for network elements used to originate or terminate interstate telephone service would be pursuant to access tariffs, not Section 252(d)(1). Section 251(d)(1) pricing applies only to those services subject to state jurisdiction as it is the state that determines whether the rate is just and reasonable. IXC access is subject to FCC regulation, and therefore is subject to Section 201.

C. Congress would not have granted States jurisdiction over interstate access arrangements.

Section 252 of the Act sets up a detailed process under which state commissions, not the FCC, are required to approve Section 251 interconnection agreements, and in the case of an impasse, arbitrate negotiations between parties. Given these provisions, the argument that Section 251 modifies interstate access charges cannot possibly be valid because it would transfer

regulation over access charges from the FCC to the States. Congress plainly did not intend such an outcome as it clearly conflicts with Section 251(i), which ratifies and leaves unaffected the Commission's jurisdiction over interstate, interexchange services, including access charges. Section 251 (i) states that "nothing in this section [251] shall be construed to limit or otherwise affect the Commission's authority under section 201." Therefore, Section 251 only governs services over which state commissions have jurisdiction.

D. Section 251(g), retaining the current access charge regime, is inconsistent with the position that Section 251 requires a change.

Section 251(g) requires that LECs provide access to IXCs in accordance with the same equal access and nondiscriminatory interconnection restriction and obligations (including receipt of compensation) that currently apply until the Commission prescribes new governing regulations. The Commission is required under Section 251(d) to complete all actions "necessary to establish regulations to implement the requirements of this section [251]. However, while Section 251(g) recognizes that the Commission has discretion to address access charges, it does not require such a review. Therefore, access charge review is not necessary to implement the requirements of Section 251 and should not be included in the 251 rulemaking proceeding.

E. The Act's legislative history supports this interpretation.

While the plain language of the Act makes clear that IXC access charges are not governed by Section 251, the legislative history eliminates any doubt. In describing Section 251 of S.652 on which Section 251(c) of the Act is based, the Joint Explanatory Statement of the Committee of Conference states:

The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission access charge rules. Joint Explanatory Statement of the Committee of Conference at 117.

Further, the Senate Committee on Commerce, Science and Transportation Report on S. 652 states, "nothing in Section 251 is intended to change or modify the FCC's rules at 47 CFR 69 et seq. regarding the charges that an interexchange carrier pays to local exchange carriers for access to the local exchange carrier's network." S.Rpt.104-23 at 22.

There is no legislative history that indicates any intent to the contrary. Indeed, had Congress intended such a fundamental restructuring of interstate access charges by Section 251, it would have said so.

F. Revising access charges has implications for universal service.

The Act calls for a Joint Board to make recommendations with regard to universal service. Section 254. The Joint Board has one year to make recommendations to the FCC, and the Commission then has 3 months to implement those recommendations.

It is widely acknowledged that access charge pricing has implications for universal service. Given this link, if Congress had intended to direct changes to the access charge regime prior to the thorough year long examination of universal service, it would have said so. It did not. Therefore, access charges should not be included in the six month Section 251 rulemaking proceeding.